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### Home Rule

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## HOME RULE

*N.Y. CONST. art. IX, § 2 (b) (2):*

*(b) Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:*

*(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only*

*(a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in his judgment constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.*

### SUPREME COURT, APPELLATE DIVISION

#### SECOND DEPARTMENT

**Building Contractors Association, Inc. v. State of New York<sup>1</sup>**  
(decided Aug. 21, 1995)

Plaintiffs, a group of labor unions, local government associations, and building contractor associations, brought suit claiming that General Municipal Law section 101 was unconstitutional.<sup>2</sup> The Supreme Court, Nassau County, dismissed some of the plaintiffs' claims and granted summary judgment for the defendants on the other claims.<sup>3</sup> The plaintiffs then brought this appeal.<sup>4</sup> The Appellate Division, Second Department, affirmed the lower court's decision, holding that General Municipal Law section 101 did not violate either the New York

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1. 630 N.Y.S.2d 763 (App. Div. 2d Dep't 1995).

2. *Id.* at 764.

3. *Id.*

4. *Id.*

State<sup>5</sup> and Federal<sup>6</sup> Equal Protection Clauses, or the Home Rule provision<sup>7</sup> of the New York State Constitution.<sup>8</sup>

General Municipal Law section 101<sup>9</sup> requires certain jobs in public construction projects to be prepared with separate specifications in order to allow separate and independent bidding on each job.<sup>10</sup> This forces a political subdivision to solicit separate bids on these projects from listed traders, rather than to give the whole job to one general contractor to manage these individual jobs by himself.<sup>11</sup> The work on these municipal improvement projects which must be separated includes: “a. Plumbing and gas fitting; b. Steam heating, hot water heating, ventilating and air conditioning apparatus; and c. Electric wiring and standard illuminating fixtures.”<sup>12</sup> In 1972, this statute was amended to exempt the county of Erie from this statute for construction of an Erie County stadium.<sup>13</sup> In 1985, this statute was amended again to exempt the county of Albany in the construction of a civic center.<sup>14</sup>

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5. N.Y. CONST. art. I, § 11 states: “No person shall be denied the equal protection of the laws of this state or any subdivision thereof.” *Id.*

6. U.S. CONST. amend. XIV, § 1 states: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” *Id.*

7. N.Y. CONST. art. IX, § 2(b)(2). These special laws that affect local governments are acceptable:

(a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in his judgment constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

*Id.*

8. *Building Contractors Ass’n, Inc.*, 630 N.Y.S.2d at 764.

9. N.Y. GEN. MUN. LAW § 101 (McKinney 1995).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

Legislative acts have a presumption of constitutionality that must be overcome by proof beyond a reasonable doubt.<sup>15</sup> The plaintiffs tried to meet this burden with several different attacks on General Municipal Law section 101. In their first and second arguments, plaintiffs claimed that this statute violated the Home Rule provision of the New York State Constitution.<sup>16</sup> The Home Rule provision was designed “to secure the right of cities to choose their officers without hindrance from the state and to preserve their privilege of continuing to administer those powers of self-government which they enjoyed before the adoption of the constitution, provided such powers remain local in nature.”<sup>17</sup>

Plaintiffs’ first Home Rule argument alleged that General Municipal Law section 101 “was created to favor certain interests in the construction industry.”<sup>18</sup> The court rejected this assertion by holding that the recognized purpose of General Municipal Law section 101 was to get the most value for the taxpayers.<sup>19</sup> Therefore, the court held that the state’s interest in regulating these contracts was both substantial and valid.<sup>20</sup> This legislative purpose for the statute did not violate the Home Rule provision because its concerns were not local in nature.<sup>21</sup>

Plaintiffs’ second attack on this statute asserted that the amendments to General Municipal Law section 101 transformed this general law into a special law.<sup>22</sup> The 1972 amendment

15. *Hotel Dorset Co. v. Trust for Cultural Resources*, 46 N.Y.2d 358, 370, 385 N.E.2d 1284, 1289, 413 N.Y.S.2d 357, 362 (1978) (“There is a simple, but well-founded, presumption that an act of the Legislature is constitutional and this presumption can be upset only by proof persuasive beyond a reasonable doubt.”). *Id.*

16. *Building Contractors Ass’n, Inc.*, 630 N.Y.S.2d at 764.

17. *Roth v. Cuevas*, 158 Misc. 2d 238, 242, 603 N.Y.S.2d 962, 965 (Sup. Ct. New York County 1993).

18. *Building Contractors Ass’n, Inc.*, 630 N.Y.S.2d at 764.

19. *Id.* See *Depot Constr. Corp. v. City of New York*, 46 N.Y.2d 859, 861, 387 N.E.2d 222, 223, 414 N.Y.S.2d 511, 512 (1979) (holding that a contractor seeking payment of his construction costs from the city of New York could not recover using General Municipal Law section 101).

20. *Building Contractors Ass’n, Inc.*, 630 N.Y.S.2d at 764.

21. *Id.*

22. *Id.*

exempted the county of Erie from this statute for construction of a county stadium.<sup>23</sup> The 1985 amendment granted the same exemption to the county of Albany for the construction of a civic center.<sup>24</sup> According to the Home Rule provision in the New York State Constitution, the legislature can only affect local governments through the enactment of general laws or special laws that meet certain requirements.<sup>25</sup> The court rejected plaintiffs' argument because the aforementioned exemptions for Albany and Erie counties only applied to these counties for specific projects.<sup>26</sup> General Municipal Law section 101's requirements still apply to all other public construction projects that take place in the counties of Erie and Albany.<sup>27</sup> Therefore, the court reasoned that this statute was not a special law and, therefore, did not violate the Home Rule provision.<sup>28</sup>

The plaintiffs' last challenge to the constitutionality of General Municipal Law section 101 was based on the Equal Protection Clauses of the New York State and Federal Constitutions.<sup>29</sup> However, because the court already ruled that the purpose of this statute was to get the best value for the taxpayers,<sup>30</sup> this argument was doomed from the start. The court held that this statute had a rational basis because the separation requirement applied to jobs that were normally subcontracted by general

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23. N.Y. GEN. MUN. LAW § 101.

24. *Id.*

25. *See supra* note 7.

26. *Building Contractors Ass'n, Inc.*, 630 N.Y.S.2d at 764.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

contractors.<sup>31</sup> Therefore, both the Federal and State equal protection claims of the plaintiffs were rejected by the court.<sup>32</sup>

General Municipal Law section 101 was ultimately found to be constitutional by the Second Department. However, it was satisfied under the Home Rule provision of the New York State Constitution despite its 1972 and 1985 amendments. It also survived equal protection attacks based on both the New York and Federal Constitutions.

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31. *Id.* New York State Soc’y of Enrolled Agents v. New York State Div. of Tax Appeals, 161 A.D.2d 1, 8, 559 N.Y.S.2d 906, 910 (2d Dep’t 1990) (“Pursuant to traditional rational basis analysis, a governmental classification will not offend the Equal Protection Clauses of the State and Federal Constitutions if it bears a fair and substantial relation to some conceivable and legitimate State interest.”) (citations omitted).

32. *Building Contractors Ass’n, Inc.*, 630 N.Y.S.2d at 764. The dissenting opinion by Judge Hart stated that there should have been a hearing on the constitutionality of General Municipal Law § 101. *Id.* at 765. Judge Hart argued that the lower court’s decision should be reversed for two reasons. First, the exemptions added to the statute require a full hearing in order to determine if they foil the substantial purpose of this statute. *Id.* (Hart, J., dissenting). Secondly, Judge Hart disagreed with the categorization of General Municipal Law § 101 as a general law. *Id.* (Hart, J., dissenting). He asserted that the 1972 and 1985 amendments altered this law so that it now “fails to uniformly embrace in its purview all political subdivisions throughout the state.” *Id.* (Hart, J., dissenting). Judge Hart considered “[s]uch an exemption [to be a clear] matter of special treatment.” *Id.* (Hart, J., dissenting).

